IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2004.

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.34325 OF 2004

Mrs.Suma ... Petitioner

Vs.

1. Inspector of Police,
   Women Police Station,
   W3 Police Station,
   Esplanade,
   Chennai.

2. Kothandaram Mugalippoo

3. Mugalippoo Hemadri ... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.C.Rajan

For R.1 : Mr.A.N.Thambidurai,
Govt.Advocate (crl.side)

For R.2 & R.3 : No appearance

O R D E R

The above Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure praying to quash the criminal proceedings in C.C.No.514 of 2003 on the file of the Court of Chief Metropolitan Magistrate, Egmore, Chennai, in view of the changed circumstances.

2. In her affidavit, the petitioner would submit that she preferred a complaint against respondents 2 and 3 before the first respondent in which a case was registered in Cr.No.28 of 2001, which has culminated in filing of the charge sheet for the offences under Sections 498-A and 406 IPC and under Section 4 of the Dowry Prohibition Act; that initially, the third respondent was arrested and was released on bail whereas the second respondent was shown as an absconder since he was residing in the United States of America; that the case was

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separated and the third respondent was questioned on 9.9.2003 for the said offence and the matter was posted for trial and subsequently, the second accused i.e. the second respondent herein appeared before the Court and the case was clubbed together and the matter is posted on 8.11.2003 for trial; that initially she had filed the case against the second respondent in the Family Court in FCOP No.182/2001 wherein the second respondent remained exparte and an exparte decree dated 7.1.2002 was passed under Section 13(1)(a) and Section 25 of the Hindu Marriage Act.

3. The petitioner would further submit that while the said O.P. was pending, the second respondent filed a case in the Circuit Court of Fair Fax County, Virginia for divorce against the petitioner and she sent a detailed counter and the said case was dismissed; that after the exparte decree of divorce granted by the II Additional Family Court, Chennai, she had waited for more than 22 months and subsequently, she got married to one Mr.Sridhar, who is a resident of Mumbai on 2.10.2003 which was registered on 18.11.2003 at Mumbai; that she is now permanently residing in Bombay and permanently a dependent on her husband; that now the second respondent has appeared before the Family Court and has filed a petition to set aside the exparte decree, which is pending for orders; that the present case before the learned Magistrate is also posted for trial; that though she had given a complaint on the ground for cruelty as well as for return of her personal belongings including jewels and also for dowry harassment, she finds it difficult to appear and adduce evidence before the learned Magistrate and she does not require the jewels or her personal belongings and she is prepared to compromise and compound the offence since she cannot afford to jeopardize her existing marriage; that moreover, she finds it difficult to come to Court from Mumbai which would cause disturbance to her present married life; that though the second respondent has not paid any alimony, she has to depend on her husband to attend the case to bear the travel expenses etc., On such grounds, the petitioner would pray for the relief extracted supra.

4. The second respondent would file a counter thereby submitting that the petitioner filed a petition for divorce in FCOP.No.182 of 2001 and an exparte decree was passed; that subsequently, he filed a petition to condone the delay in filing the petition to set aside the exparte decree and a detailed counter was filed in that petition by the petitioner herein but she never revealed that she was remarried; that the condone delay petition was allowed and the petition to set aside the exparte judgment and decree

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is now pending before the II Additional Family Court and for the first time in the counter to the petition to set aside the exparte judgment and decree, the petitioner came forward with a statement that she is remarried and the matter is pending enquiry; that the petitioner and the respondent attempted to resolve all the issues amicably, while the petitioner was willing to compound the criminal case, she wanted to have the order of the divorce passed on the grounds of cruelty left uncontested; that he explained his difficulties that he would suffer if an order of divorce is granted on the grounds of cruelty when he did not contest the same as he was at U.S. at that time, but the petitioner was not willing to come for an amicable settlement in respect of all the issues and she simply wanted to get herself relieved from being cross-examined in the criminal case which would give him a fair opportunity to prove his innocence and the innocence of his father, the third respondent herein; that he left his job at U.S. and come to India with the only intention to face the criminal prosecution that was lodged against him at the instance of the petitioner; that now the petitioner wants to enjoy the order of divorce which she obtained on the ground of cruelty and she does not want to permit this respondent to have the benefit to cross-examine her to satisfy the Court that he has not committed any offence against her; that the petitioner has filed this petition with an intention to frustrate the opportunity afforded to him in law to prove his innocence.

5. This respondent would further submit that he has no intention to cause slightest inconvenience or disturbance to petitioner in any manner and he is willing to sort out all the disputes amicably in a manner known to law by filing a petition for divorce by mutual consent and also to cooperate with the petitioner to compound the offence by filing the quash petition, but he does not want his right to be prejudiced in any manner and unless his innocence is established by legal process, he would not be able to have a decent future where his personal life and job opportunity would be frustrated on account of the ground of cruelty on which the petitioner has obtained an order of divorce; that the only opportunity available to him is to cross-examine the petitioner on the allegation made against him. On such grounds, this respondent would pray to consider his submission and dismiss the above petition.

6. During arguments, the learned counsel for the petitioner would reiterate the facts pleaded in the affidavit of the petitioner and would submit that after 2

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or 3 years of her re-marriage, the second respondent is filing a petition to set aside the exparte decree of divorce and would cite a judgment of the Honourable Apex Court delivered in B.S.JOSHI AND OTHERS vs. STATE OF HARYANA AND ANOTHER reported in (2003) SCC (Cri) 848, wherein it is held that

> "There may be many reasons for not supporting the imputations. In such eventuality, there would almost be no chance of conviction. So it would not be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides. Further, in MADHAVARAO JIWAJIRAO SCINDIA v. SAMBHAJIRAO CHANDRAOJIRAO ANGRE (1988) 1 SCC 692 it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. The Special features in such matrimonial matters are evident. It becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.
>
> A hyper-technical view would be conter-productive and would act against the interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of IPC."

7. On the other hand, the learned counsel appearing on behalf of the respondents 2 and 3 and the learned Government Advocate (Criminal Side) appearing on behalf of the first respondent would submit a few points

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adhering to the facts of the case and would lay emphasis on the counter affidavit filed by the second respondent. On the part of the learned Government Advocate, he would come forward to submit that having herself lodged the complaint now she cannot be permitted to quash the proceedings which have been constructed on the part of the first respondent/Police and on completion of investigation the charge sheet has been filed based on which it has been taken on file of the Court of competent jurisdiction in its C.S.No.514 of 2003 and therefore it would be only proper on the part of the petitioner to cooperate with the first respondent in prosecuting the case for the desired result to be obtained. There is no denying of the fact that on the part of the learned Government Advocate that the petitioner will be at liberty to depose before the court to the present situation as she has come forward to narrate in the petition for which there would not have been absolutely any hindrance. On such arguments, the learned Government Advocate and the learned counsel for the respondents 2 and 3 would pray to dismiss the above Criminal O.P.

8. In consideration of the facts pleaded having regard to the materials placed on record and upon hearing the learned counsel for all the parties to the contest what this court is able to analyze is that the petitioner and the second respondent are respectively wife and husband since their marriage was legally solemnized and taking advantage of the second respondent residing at United States, the petitioner was able to get an exparte decree of divorce though she had vehemently opposed a similar application filed by the husband seeking divorce in the U.S. Court at Virginia.

9. It could be seen that on a refusal to give her consent for her divorce, the petition filed by the husband seeking dissolution of marriage had been dismissed by the U.S. Court at Virginia, but to suit her convenience the petitioner has filed a divorce petition in India before the II Additional Family Court at Chennai and since no proper processing would have taken for the notice to be served on her husband in U.S. Court, the petitioner was able to get an exparte decree of divorce with the help of which she has married another man the second time and she is now settled at Mumbai along with her second husband.

10. While the above facts are one side of the story, the facts relating to the other side is that the petitioner herself has lodged a criminal complaint before the first respondent/Police for the commission of the alleged offence under Section 498-A, 406 I.P.C. and under

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Section 4 of the Dowry Prohibition Act against the respondents 2 and 3 of whom the 2nd respondent is her husband and now her husband has come to India and wants to defend the case. But again, the petitioner to suit her convenience has come forward to file the above Criminal O.P. seeking to quash the above case registered and taken on file by the Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.514 of 2003 which is the product of her own complaint.

11. On the other hand, her move is vehemently opposed by the husband/2nd respondent on ground that since cruelty has been alleged, it is susceptible to attach stigma to the rest of his life and even thereafter and therefore he would like to have effective cross examination of the petitioner in the box regarding that aspect.

12. The second respondent/husband would further put up a strong case stating that himself having filed a petition to set aside the exaprte divorce granted in favour of the petitioner along with the delay condonation application and this delay condonation petition has been allowed by the Family Court, Chennai and the petition to set aside the exparte decree of divorce is also under consideration and therefore there is every possibility of the exparte decree of divorce obtained by the petitioner has to be set aside and on these circumstances would oppose the above criminal Original Petition.

13. In consideration of the facts and circumstances of the case, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the respondents as well, this Court is of the strong view that it is the third occasion in which the petitioner to suit her convenience has been playing her game causing such nuisance not only to the second respondent but also to the prosecuting authorities and the legal system itself and therefore since there is a point on the part of the second respondent/husband to ventilate his grievances regarding the plea taken on the part of the petitioner that his legal cruelty and unless the allegation is contraverted on the floor of the court, great prejudice would be caused to his interest and therefore it is only desirable to permit the second respondent to have such legal facilities to challenge the case registered by the petitioner and therefore it is not at all desirable to simply quash the above proceedings in C.C.No.514 of 2003 pending on the file of the Court of The Chief Metropolitan Magistrate, Egmore, Chennai.

14. Secondly since there is every likelihood of

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the exparte decree of divorce being set aside whatever the petitioner has committed based on exparte decree of divorce are likely to be declared nullity and therefore whatever decisions have been taken on the part of the petitioner cannot prevail over the legal dictum which is a false messiah and therefore the petitioner cannot take such advantage to seek from this Court to invoke its inherent powers conferred by law under Section 482 of the Code of Criminal Procedure for her own selfish advantage and in these circumstances the only conclusion that this Court could arrive at is to dismiss the above Criminal Original Petition and the same is ordered accordingly.

In result,

The above Criminal Original Petition does not merit acceptance but only becomes liable to be dismissed and is dismissed accordingly.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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Copy to

1) The Chief Metropolitan Magistrate,
Egmore, Madras

2) The Public Prosecutor,
Chennai

3.The Inspector of Police
Women Police Station
W3 Police Station Esplanade, Chennai

+1cc to Mr.C.Rajan ,Advocate Sr 56468

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